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470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402  
(612) 337-9300 telephone  
(612) 337-9310 fax  
[www.kennedy-graven.com](http://www.kennedy-graven.com)  
Affirmative Action, Equal Opportunity Employer

**ROBERT J. V. VOSE**  
Attorney at Law  
Direct Dial (612) [REDACTED]  
Email: [rvose@kennedy-graven.com](mailto:rvose@kennedy-graven.com)

December 4, 2018

Commissioner of Administration  
c/o Data Practices Office  
320 Centennial Office Building  
658 Cedar St.  
St. Paul, MN 55155

**VIA E-MAIL ([info.dpo@state.mn.us](mailto:info.dpo@state.mn.us))**  
**AND U.S. MAIL**

**Re: City of Victoria; Request for Advisory Opinion**

Dear Commissioner:

We serve as city attorney for the City of Victoria regarding civil matters. On behalf of the City, we request an advisory opinion pursuant to Minnesota Statutes Section 13.072.

The City received the enclosed data practices request from Ms. Sara Coon dated November 7, 2018, along with the supplementary information also enclosed. Ms. Coon requested certain data or information related to a Facebook page established by Victoria Mayor Thomas Funk known as "Victoria Residents First."<sup>1</sup> On November 9, 2018, the City's responsible authority e-mailed a Department of Administration official seeking advice regarding this request. The Department's response, enclosed, was that the Facebook page and its contents are not "government data" and thus the City is not required to provide responsive data. The City replied to Ms. Coon in accordance with this informal advice.

Subsequently, at the most recent City Council meeting on November 26, 2018, Mayor Funk indicated that he established the "Victoria Residents First" Facebook page to communicate in his capacity as the Mayor. The "About" section of the Facebook page states:

This is for Victoria MN citizens to follow activities related to City Hall & the Council. I stand for transparency, public input & fiscal responsibility.

The Mayor uses "Victoria Residents First" to post his personal views on various issues, some of which have been, or might be, considered by the City Council. The Mayor's views may or may not align with the City Council's positions on such matters. In turn, people sometimes reply to the Mayor's posts and this periodically results in further discussion or debate on the Facebook page.

<sup>1</sup> <https://www.facebook.com/Victoria-Residents-First-264719604038789/> The Mayor previously established a webpage also identified as "Victoria Residents First." That webpage was apparently eliminated several months ago.

Minnesota Statutes, section 13.02, subdivision 7, provides:

“Government data” means all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.

The Department broadly construes the term “government data.” In Advisory Opinion Nos. 95-013, 08-028, and 12-019, the Department concluded that data such as audio recordings, e-mail, and text messages may be “government data” even if collected, sent or received by a public official on a personal device that is not owned or provided by the governmental unit. However, it appears that only Advisory Opinion No. 18-005 addresses a request for, among other data, “social media communications.” That opinion does not resolve whether posts and other activities on social media such as Facebook, conducted by an individual governmental official without the governmental unit’s authorization or involvement, constitute “government data.”

With this background, we request opinions concerning the following questions:

1. Is the “Victoria Residents First” Facebook page, and posts or other entries on such page by the Mayor and others, City of Victoria “government data” subject to the Minnesota Government Data Practices Act?

We agree with the Department’s informal advice that “Victoria Residents First” Facebook page does not constitute “government data” because the data associated with this Facebook page was not collected, created, received, maintained or disseminated by the City of Victoria. The City did not create the Facebook page and the City Council has not authorized or approved Mayor Funk’s establishment of such page or his participation on the page as the Mayor. Neither state law nor City of Victoria policies require the mayor or council members to participate in social media such as Facebook.

Moreover, as a practical matter it is unclear whether the City, or even the Mayor himself, could access data collected on the “Victoria Residents First” page. Because the City did not create the “Victoria Residents First” page and has no role in its maintenance, it is our understanding that the City has no means to provide or facilitate access to data on the page. Further, the City cannot “block” or “unblock” particular persons from obtaining access to the page.<sup>2</sup>

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<sup>2</sup> Posts on Facebook pages generally may be viewed by any Facebook user that has not been “blocked.” As we understand it, the ability to “block” users is a functionality Facebook makes available to the creators of Facebook pages and others authorized by page creators. Facebook itself also apparently exercises some editorial control over pages and posts, and access to pages and posts, although the company’s policies are unclear.

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2. If the Facebook page constitutes "government data," but such data can only be accessed via the Facebook platform and cannot otherwise be accessed or disseminated, is this arrangement compliant with the Minnesota Government Data Practices Act?<sup>3</sup>
3. If the Facebook page constitutes "government data," does Mayor Funk have any legal responsibility to afford or facilitate access to the "government data" produced or collected on the Facebook page?<sup>4</sup>

Please contact me if you have any questions or need any other information. Thank you for your assistance.

Sincerely,

KENNEDY & GRAVEN, CHARTERED



Robert J.V. Vose  
Victoria City Attorney

Enclosures

cc (with enclosures): Mayor Thomas Funk  
Andy Pratt, Esq., private counsel to Mayor Funk  
Doug Reeder, Interim City Manager  
Cindy Patnode, Responsible Authority  
City Council

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<sup>3</sup> The Mayor has "unblocked" previously "blocked" users of "Victoria Residents First," and has said he will not "block" users again.

<sup>4</sup> On November 26, 2018, the Mayor e-mailed a dropbox link to the City containing a wordpress (zip) file with 9,339 KB of data. The Mayor explained that the file: "...contains my Mayor web site I shut down months ago. The link will be good for about 7 days. I'm providing this is to you as I just recently learned this is government data and as such I am turning a copy over to you as the responsible authority for the City...." Ms. Coons' requests do not relate to the Mayor's former webpage. The Mayor has apparently concluded that the "Victoria Residents First" Facebook page also constitutes "government data," but the Mayor has not provided data associated with the Facebook page to the City in response to Ms. Coons' request.

## ATTACHMENTS



### INFORMATION DISCLOSURE REQUEST Minnesota Government Data Practices Act

#### A. Completed by Requester

<b>REQUESTER NAME (Last, First, M.):</b> Coon, Sara L.	<b>DATE OF REQUEST:</b> November 7, 2018		
<b>STREET ADDRESS:</b> [REDACTED]	<b>PHONE NUMBER:</b> [REDACTED]		
<b>CITY, STATE, ZIP CODE:</b> Victoria, MN [REDACTED]	<b>SIGNATURE:</b> [REDACTED]		
<b>EMAIL:</b> [REDACTED]@gmail.com			
Describe the data you are requesting as specifically as possible. If you need more space, please use the back of this form:  3 pages attached describing request for information from City Hall Facebook page "Victoria Residents First" moderated by Mayor Funk.			
<b>I AM REQUESTING ACCESS TO THE DATA IN THE FOLLOWING MANNER:</b>  <table style="width: 100%;"> <tr> <td style="width: 50%;"> <input type="checkbox"/> Inspection    <input checked="" type="checkbox"/> Copies  <input type="checkbox"/> Paper    <input type="checkbox"/> Pick up    <input type="checkbox"/> Mail  <input type="checkbox"/> Email    <input checked="" type="checkbox"/> Other    Publicly posted back on the Facebook page in total                         </td> <td style="width: 50%;"> <input type="checkbox"/> Both inspection and copies  <input type="checkbox"/> Paper    <input type="checkbox"/> Pick up    <input type="checkbox"/> Mail  <input type="checkbox"/> Email    <input type="checkbox"/> Other                         </td> </tr> </table>		<input type="checkbox"/> Inspection <input checked="" type="checkbox"/> Copies <input type="checkbox"/> Paper <input type="checkbox"/> Pick up <input type="checkbox"/> Mail <input type="checkbox"/> Email <input checked="" type="checkbox"/> Other    Publicly posted back on the Facebook page in total	<input type="checkbox"/> Both inspection and copies <input type="checkbox"/> Paper <input type="checkbox"/> Pick up <input type="checkbox"/> Mail <input type="checkbox"/> Email <input type="checkbox"/> Other
<input type="checkbox"/> Inspection <input checked="" type="checkbox"/> Copies <input type="checkbox"/> Paper <input type="checkbox"/> Pick up <input type="checkbox"/> Mail <input type="checkbox"/> Email <input checked="" type="checkbox"/> Other    Publicly posted back on the Facebook page in total	<input type="checkbox"/> Both inspection and copies <input type="checkbox"/> Paper <input type="checkbox"/> Pick up <input type="checkbox"/> Mail <input type="checkbox"/> Email <input type="checkbox"/> Other		

#### B. Completed by the City of Victoria

<b>INFORMATION CLASSIFIED AS:</b> <input type="checkbox"/> PUBLIC <input type="checkbox"/> NON-PUBLIC <input type="checkbox"/> PRIVATE <input type="checkbox"/> PROTECTED NON-PUBLIC <input type="checkbox"/> CONFIDENTIAL	<b>ACTION:</b> <input type="checkbox"/> APPROVED <input type="checkbox"/> APPROVED IN PART (explain below) <input type="checkbox"/> DENIED (explain below)
<b>CITY CLERK REMARKS OR BASIS FOR DENIAL INCLUDING STATUTE SECTION:</b>  _____	
<b>MINNESOTA CLASSIFICATION CODE:</b>  _____	
<b>COPYING CHARGES/ASSOCIATED COSTS:</b> <input type="checkbox"/> NONE <input type="checkbox"/> DEPOSIT \$ _____ <input type="checkbox"/> _____ Pages x _____ = _____ <input type="checkbox"/> Actual Cost: _____	<b>IDENTITY VERIFIED FOR PRIVATE INFORMATION:</b> <input type="checkbox"/> IDENTIFICATION: DRIVER'S LICENSE, STATE I.D., etc. <input type="checkbox"/> COMPARISON WITH SIGNATURE ON FILE <input type="checkbox"/> PERSONAL KNOWLEDGE <input type="checkbox"/> OTHER: _____
<b>CITY CLERK SIGNATURE:</b> _____	<b>DATE:</b> _____
<b>DEPARTMENT SIGNATURE:</b> _____	<b>DEPARTMENT REMARKS:</b> _____

Make check/money order payable to: City of Victoria. If mailed, return form: City of Victoria, Attn: City Clerk, City of Victoria, 1670 Stieger Lake Lane, PO Box 36, Victoria, MN 55386, or email form to [cpatnode@ci.victoria.mn.us](mailto:cpatnode@ci.victoria.mn.us)

The City cannot require you, as a member of the public, to identify yourself or explain the reason for your data request. However, depending on how you want us to process your request (if, for example, you want us to mail you copies of data), we may need some information about you. If you choose not to give us any identifying information, we will provide you with contact information so you may check on the status of your request. In addition, please keep in mind that if we do not understand your request and have no way to contact you, we will not be able to process your request.

Victoria City Hall has a Community Facebook page, Victoria Residents First <https://www.facebook.com/pg/Victoria-Residents-First-264719604038789/posts/> which appears to be managed by Mayor Funk. See the attached Facebook screen shots in Photo 1 showing the Page.

The "about" description (as seen in Photo 2) states

"This is for Victoria MN citizens to follow activities related to City Hall & the Council. I stand for transparency, public input & fiscal responsibility."

Four days ago, which would be November 2, 2018, the mayor banned Jay Nebben from this site, see Photo 3. Because this website is "for Victoria citizens" and because this website "stands for transparency and public input", I am requesting the following items from Victoria City Hall about / from the Victoria Residents First "Community" Facebook page.

1. All post made by Jay Nebben that are now blocked – to provide transparency for Victoria citizens.
2. Summary information on:
  - a. How many users / people have been banned from this page?
  - b. How many total posts have the banned users/people made that are no longer visible?

Again, this request is to provide transparency for the Victoria citizens.

Photo 1. Victoria Residents First Facebook Page

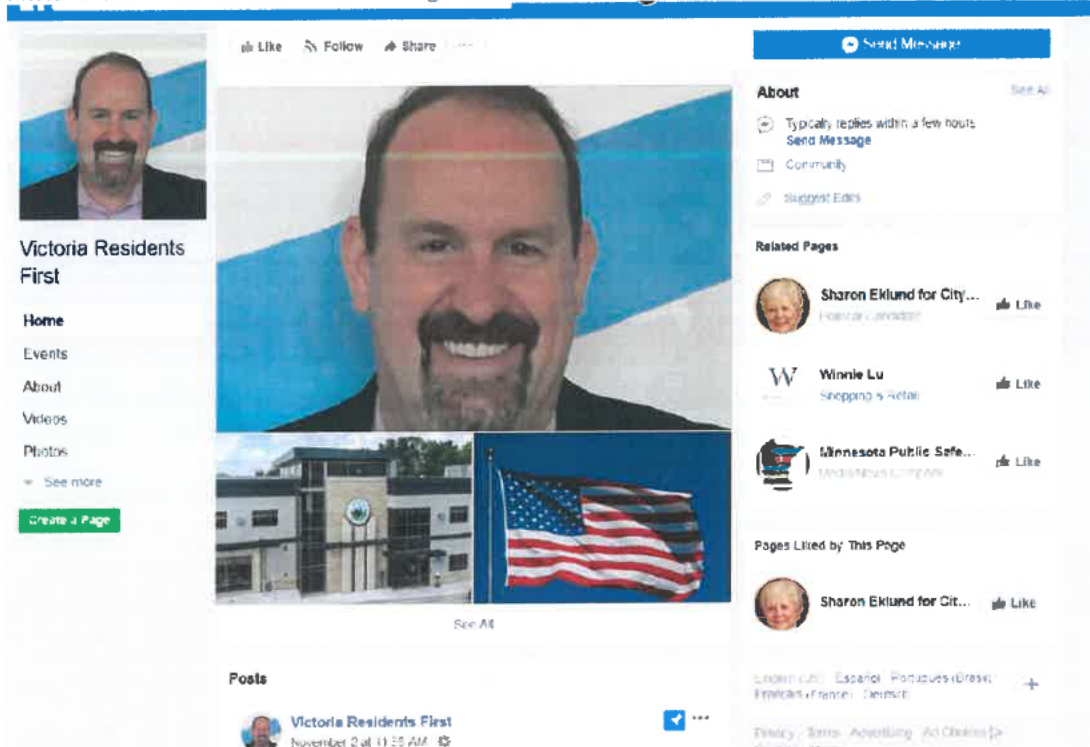









Photo 2. About Statement on Victoria Residents First Page

Victoria Residents First





**Victoria Residents First**


 Like  Follow  Share ...

[Home](#)  
[Events](#)  
**About**  
[Videos](#)  
[Photos](#)  
[See more](#)

**About**

**CONTACT INFO**  
 m.me/264719604038789 

**MORE INFO**

 **About**

This is for Victoria MN citizens to follow activities related to City Hall & the Council. I stand for transparency, public input & fiscal responsibility.


 **Community**



Photo 3 Statement Banning Jay Nebben



**Victoria Residents First** I've chosen to Ban Jay Nebben from my site. He supports those who were found guilty by a Judge for INTENTIONALLY violating the law while doing back room deals and then tries to equate me meeting with residents about Victoria as equivalent to what the they did. He is entitled to his opinion, but he is not entitled to make up facts. He is twisting me meeting with people to educate myself about issues facing Victoria as equivalent to breaking the law and doing back rooms deals. He clearly **does** not know the law or understand what actually happened.

Like Reply 4d Edited



**Keely Mandel** Victoria Residents First I couldn't read the comments that Jay Nebben posted because they appear to have been deleted, but it seems counterproductive (and not very neighborly) to block someone, then essentially slander them. I'd like to see our leaders take more of a high road approach in hopes that their community spirit trickles down to their citizens. I strongly believe that if we, as neighbors, sat down face-to-face to discuss our differences, the discussions would be far more civil and much more would be accomplished. I love Victoria and want to see our community come **together** and not be torn further apart.

Like Reply 4d



Additional Data Request related to Request submitted on November 7, 2018

The Victoria Residents First Facebook page has now blocked posts I made. Three post made approximately one week ago (November 4 or 5) with responses made by Paul Hepperla have been removed/blocked/banned. I would like these posts to remain public. A screen shot with arrows marking the location of the missing posts is included in this e-mail.

In addition, post made by Emily Nebben at approximately the same time have also been removed/blocked/banned. Since these were made on a public page, I'd like to request they be returned to public view. A screen shot with arrows marking the location of the missing posts is included in this e-mail.

I have also attached a page from the Minnesota League of Cities Mayor handbook that I believe shows the Facebook posts are public information.

Please let me know when you expect this data request to be completed.

Sara Coon

[REDACTED]





## Victoria Residents First

Home

Events

About

Videos

Photos

See more

Create a Page

Share Save Suggest Edits

1w



**Thomas Funk Shannen Loewen** Yup. Hoping the new Council will change how City Hall works today.

1w



**Thomas Funk Jay Nebben** I'm really tired of hearing that same lie from you. I can and do meet with all sorts of people about Victoria just like any other elected official. I understand that support those who intentionally break the law doing back room deals, but I did NO SUCH THING. I don't care if you don't like me or my policies or views, but quit lying about things where you clearly do not understand the law.

1w



**Victoria Residents First** Once again the supporters of those who support those elected officials who intentionally violated the law doing back room deals want the public to get a partial view of the truth. It is good this is starting to come out. The facts are that at first the... See More

1w



**Paul Hepperla** Sara Coon the PTF was pulled from the Consent agenda on 5/29. The notes are in the 6/11 meeting. You can view those at:

[http://victoria.granicus.com/MetaViewer.php?view\\_id=...](http://victoria.granicus.com/MetaViewer.php?view_id=...)

1w



**Paul Hepperla** Let's stop implying one or another are "misleading" and "half the story" when it was really clearly found in the Council minutes.

Are you after the truth or just pushing an agenda? Sheesh

1w



**Paul Hepperla** Sara Coon If that was the case you wouldn't be casting aspersions and using statements like "misleading" and "half the story."

As far as you making a mountain out of a molehill on the task force, it's pretty easy to look back through the Council age... See More

6d



**Tim Amundsen** Victoria Residents First I hesitate to enter the fray here but



## Victoria Residents First

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Share Save Suggest Edits ...

Go



Dave Clayton Love the info!

1w



Victoria Residents First Glad you found it helpful!

1w



Mark Schneider The "Old Guard" trying to rise again. Keep up the good work Mayor Funk simply trying to improve Victoria for ALL and not a select few. Cheers!

1w



Mark Schneider Emily Tracy Nebben Emily, Emily... give it up. First guess: wrong. Please, take a break! Nice day for a walk.

1w



Mark Schneider Emily Tracy Nebben We're all tired of this. Bye, bye.

1w



Keely Mandel Mark Schneider as a resident trying to decide who to vote for, I find your comments frustrating. If you want to benefit Victoria, as I do, your rude and condescending approach is very off-putting.

1w



Jason Schmidt Great work Mayor Funk!

1w



## MINNESOTA MAYORS HANDBOOK

Minn. Stat. § 13D.05, subd. 3  
*Prior Lake American v. Mader*,  
642 N.W.2d 729 (Minn. 2002)

Minn. Stat. § 13D.05, subd. 3

Minn. Stat. § 13D.05, subd. 3

Minn. Stat. § 13D.05, subd. 1  
(d)

Minn. Stat. ch. 13

Minn. Stat. § 13.02, subd. 16  
Minn. Stat. § 13.03, subd. 2  
Minn. Stat. § 13.05, subd. 13

- Meetings between council and its attorney to discuss active, threatened, or pending litigation when the balancing of the purposes served by the attorney-client privilege against those served by the Open Meeting Law dictates the need for absolute confidentiality.
- Meetings to determine the asking price for real or personal property to be sold, review confidential or protected nonpublic appraisal data, or develop/consider offers or counteroffers for the purchase or sale of property.
- Meetings to receive security briefing and reports, to discuss issues related to security systems, to discuss emergency response procedures, and to discuss security deficiencies in or recommendations regarding public services, infrastructure, and facilities.

Except for meetings closed under the attorney-client privilege, all closed meetings must be electronically recorded.

### B. Data practices

Cities are often asked to release information. In doing so, every city in Minnesota must comply with the Minnesota Government Data Practices Act (MGDPA). Government data means all data collected, created, received, maintained, or disseminated by the city regardless of its physical form, storage media, or conditions of use. This would include data one receives or creates in the capacity of mayor. The Act presumes that government data are public and are accessible by the public for inspection and copying unless there is a federal law, state statute, or temporary classification of data that provides differently.

If a city receives a request for government data, it is the role of the city-appointed "responsible authority" or their designee to respond. Unless the council decides otherwise, for statutory or home rule charter cities, the elected or appointed city clerk is the responsible authority by default. And if a home rule charter does not provide for a city clerk, the responsible authority is the chief clerical officer for filing and record keeping purposes.

**From:** Christensen, Stacie (ADM) <stacie.christensen@state.mn.us>  
**Sent:** Friday, November 9, 2018 1:18 PM  
**To:** Cindy Patnode <cpatnode@ci.victoria.mn.us>  
**Cc:** Doug Reeder <dreeder@ci.victoria.mn.us>; Kelly Grinnell <kgrinnell@ci.victoria.mn.us>  
**Subject:** RE: Data Request

Hi Cindy,  
Information from the Facebook page is not government data if the City is not collecting, creating, receiving, maintaining, or disseminating data related to that page. So, you would not be required to provide data responsive to a request if it is not the City's government data. Whether this page is misleading may be something your City chooses to address, but it isn't a data practices question that I can help to answer.

If you have any follow-up questions, certainly let me know. Stacie



**Stacie Christensen | Director**  
**Data Practices Office**  
Assistant Director | Community Services Division  
320 Centennial Office Building  
658 Cedar Street  
Saint Paul, MN 55155  
[stacie.christensen@state.mn.us](mailto:stacie.christensen@state.mn.us)  
(651) [REDACTED]

<https://mn.gov/admin/data-practices/>

**From:** Cindy Patnode <cpatnode@ci.victoria.mn.us>  
**Sent:** Friday, November 9, 2018 12:28 PM  
**To:** Christensen, Stacie (ADM) <[stacie.christensen@state.mn.us](mailto:stacie.christensen@state.mn.us)>  
**Cc:** Doug Reeder <[dreeder@ci.victoria.mn.us](mailto:dreeder@ci.victoria.mn.us)>; Kelly Grinnell <[kgrinnell@ci.victoria.mn.us](mailto:kgrinnell@ci.victoria.mn.us)>  
**Subject:** FW: Data Request

Hi Stacie,  
Our current Mayor has a website called "Victoria Residents First Facebook Page" that he is running independent of the city website.  
The attached data request is wanting information from that website.  
Since it is not the city's, we don't have any information to give her.  
My question would be, since he has laid it out so that it does look like City Hall is part of it, is there anything that I need to do?  
Any information would be appreciated.

Thank you kindly,

Cindy Patnode  
City Clerk  
City of Victoria  
952- [REDACTED]

**From:** Sara Coon <[REDACTED]@gmail.com>  
**Sent:** Wednesday, November 7, 2018 6:52 PM  
**To:** Doug Reeder <[dreeder@ci.victoria.mn.us](mailto:dreeder@ci.victoria.mn.us)>  
**Cc:** Cindy Patnode <[cpatnode@ci.victoria.mn.us](mailto:cpatnode@ci.victoria.mn.us)>; Kelly Grinnell  
<[kgrinnell@ci.victoria.mn.us](mailto:kgrinnell@ci.victoria.mn.us)>  
**Subject:** Data Request

Dear Doug,  
I've attached a signed Data Request form that I'm hoping you can fill. Please let me know the approximate cost prior to completing the request.  
Regards,  
Sara Coon